Supreme Court, U.S.
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In The

Supreme Court of the United States

JAMES W. SANDLIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

What is the quantum of evidence required on a prosecution for false statements to a financial institution under 18 U.S.C. §1014 in order to prove that the false statement was made in order to induce the financial institution to make a loan?

Is the fact of the false statement, without more, sufficient to prove that the false statement was made with the intent to induce a financial institution to make a loan?

What effect does the government's concession, at sentencing, that the purpose of the false statement to the financial institution under 18 U.S.C. §1014 was not in order to induce the financial institution to make the loan, but was for some other reason, have on the appellate court's review of the sufficiency of the evidence?

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TABLE OF CONTENTS

Page

QUESTIONS FOR REVIEW i

What is the quantum of evidence required on a prosecution for false statements to a financial institution under 18 U.S.C. §1014 in order to prove that the false statement was made in order to induce the financial institution to make a loan?

Is the fact of the false statement, without more, sufficient to prove that the false statement was made with the intent to induce a financial institution to make a loan?

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PARTIES TO PROCEEDINGS ii

TABLE OF CONTENTS iii

INDEX OF AUTHORITIES v

OPINION BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

A. Proceedings Below 2

B. Statement of Facts 3

QUESTIONS FOR REVIEW 9

REASONS FOR GRANTING THE WRIT 9

CONCLUSION 16

APPENDIX

Appendix A: Fifth Circuit Opinion, revised December 22, 2009 ..... 1a

Appendix B: Fifth Circuit Judgment, filed December 1, 2009 ..... 19a

Appendix C: District Court Judgment in a Criminal Case, dated November 26, 2008 ..... 21a

INDEX OF AUTHORITIES

Cases	Page
Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978)	16
Greene v. Massey, 437 U.S. 19, 98 S.Ct. 2151, 57 L.Ed.2d 15 (1978)	16
In re Winship, 397 U.S. 358 (1970)	10
Jackson v. Virginia, 443 U.S. 307 (1979)	10
United States v. Barrera, 547 F.2d 1250 (5th Cir. 1977)	16
United States v. Bright, 550 F.2d 240 (5th Cir. 1977)	16
United States v. Casey, 540 F.2d 811 (5th Cir. 1976)	15
United States v. Covelli, 738 F.2d 847 (7th Cir. 1984), *cert. denied*, 469 U.S. 867 (1984)	10
United States v. Ferg, 504 F.2d 914 (5th Cir. 1974)	15
United States v. Goss, 650 F.2d 1336 (5th Cir. 1981)	15

United States v. James W. Sandlin,
589 F.3d 749 (5th Cir. 2009) 1

United States v. Krown,
675 F.2d 46 (5th Cir. 1982), *cert. denied*,
459 U.S. 839 (1982) 11

United States v. Lentz,
524 F.2d 69 (5th Cir. 1975) 11

United States v . Leos-Quijada,
107 F.3d 786 (10th Cir. 1997) 10

United States v. Martinez,
555 F.2d 1269 (5th Cir. 1977) 15

United States v. McDow,
27 F.3d 132 (5th Cir. 1994) 11

United States v. McDowell,
498 F.3d 308 (5th Cir. 2007) 10

United States v. Peterson,
488 F.2d 645 (5th Cir.), *cert. denied*, 419 U.S.
828, 95 S.Ct. 49, 42 L.Ed.2d 53 (1974) 15

United States v. Williams-Hendricks,
805 F.2d 496 (5th Cir. 1986) 10

Codes and Rules

18 U.S.C. §1014 ..... 2, 9

28 U.S.C. §1254(1) 1

Constitutional Provisions

U. S. Const., amend. V 1, 9

Petitioner, JAMES W. SANDLIN, hereby petitions for a writ of certiorari to review the opinion of the United States Court of Appeals for the Fifth Circuit (entered December 1, 2009) affirming Petitioner's conviction for making a false statement on a loan application in violation of 18 U.S.C. §1014. No motion for rehearing was filed.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit dated December 1, 2009, revised by court on December 22, 2009, is *United States v. James W. Sandlin*, 589 F.3d 749 (5th Cir. 2009).

This opinion was published. A copy of this opinion may be found in Appendix A of this Petition.

STATEMENT OF JURISDICTION

The Court of Appeals opinion was entered on December 1, 2009. A revised opinion was issued on December 22, 2009. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V, U. S. Const.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. §1014

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, . . . upon any application , advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

STATEMENT OF THE CASE

A. Proceedings Below

On November 15, 2007, Appellant, James W. Sandlin, was indicted in the United States District Court for the Eastern District of Texas in a two count indictment charging him with making false statements to a financial institution in violation of 18 U.S.C. §1014. (T1, pp. 13-14).[1]

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[1] T refers to the clerk's transcript.

Trial by jury was held from June 9 until June 11, 2008, after which Sandlin was found guilty. Sentencing was held on November 25, 2008, at which time the court assessed a sentence of 36 months in the custody of the Bureau of Prisons and 3 years supervised release. (T1, p. 54). Notice of Appeal was timely given. (T1, p. 56). On December 1, 2009, the United States Court of Appeals for the Fifth Circuit affirmed the conviction, while vacating and reversing the sentence. No motion for rehearing was filed.

B. Statement of Facts

The indictment in this case alleged in count one that,

> 1. On or about March 14, 2006, in the Eastern District of Texas and elsewhere, the defendant,
>
> **JAMES W. SANDLIN,**
>
> knowingly made a false statement and report for the purpose of influencing the action of Independent Bank, a federally insured financial institution, upon an application for a line of credit, to wit, SANDLIN delivered to Independent Bank, Sherman, Texas, a personal financial statement in which he knowingly and willfully failed to disclose a debt owed by SANDLIN in the amount of $996,000.00
>
> All in violation of Title 18, United States Code, Sections 1014 and 2.

Count two alleged:

> 2. On or about December 29, 2006, in the Eastern District of Texas and elsewhere, the defendant,

JAMES W. SANDLIN,

knowingly made a false statement and report for the purpose of influencing the action of Independent Bank, a federally insured financial institution, in connection with a line of credit, to wit, SANDLIN delivered to Independent Bank, Sherman, Texas, a personal financial statement in which he knowingly and willfully failed to disclose a debt owed by SANDLIN in the amount of $996,000.00.

All in violation of Title 18, United States Code, Sections 1014 and 2. (T1, pp. 13-14).

The evidence established that Sandlin was a successful real estate developer from Arizona who moved to Sherman, Texas. He was originally from Kentucky, had grown up poor and joined the armed services. He later went to college, earned a bachelors and masters degree, eventually settling in Arizona where he pursued his successful business ventures. (RR1, pp. 133, 167-168).[2]

Sandlin was an exercise walker and through this activity he met Jim and Mary Louise Ricketts. (RR1, p. 141). The Ricketts were a retired couple from Sherman and they developed a friendship with Sandlin. While in the course of discussing the Ricketts retirement income, Sandlin offered to borrow $996,000.00 from the Ricketts and to pay them a guaranteed 10 percent interest on the loan. This was a higher rate of return than they were receiving on their investments and they reached an agreement with Sandlin concerning this. (RR 1, p. 145).

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[2] RR refers to the Reporter's Record.

The Ricketts made the loan to Sandlin and he faithfully made the monthly payments to them of $8,300.00 per month. Their loan was also secured by land Sandlin owned in Arizona. Sandlin never missed a payment and the Ricketts were completely satisfied with the agreement they had made with Sandlin. (RR1, pp. 226, 338). The Ricketts and Sandlin remain friends to this day. (RR1, pp. 146-147, 155)

Sandlin was a wealthy man with a net worth of multi-millions of dollars. (RR1, p. 144). In fact, he had assets in the range of $15,000,000.00 to $20,000,000.00. Although Sandlin was not financially needy, the loan from the Ricketts was beneficial to his business operations and was also beneficial to the Ricketts because of the rate of interest paid. (RR1, pp. 145-147, 165).

Sandlin later began development of a real estate project in Arizona. He had established a banking relationship with the Independent Bank of Sherman, Texas and used that bank in connection with the Arizona real estate development. (RR2, p. 230). Daniel Brooks, the President of Independent Bank, testified that Sandlin was a good customer of the bank, was always timely on his payments and that the bank had no complaints about anything Sandlin had done. (RR2, p. 23)

Sandlin's initial involvement of Independent Bank in the Arizona project was for a $950,000.00 Letter of Credit. The Letter of Credit was issued by the bank to Mohave County, in Arizona, as a guarantee that certain work would be performed. Sandlin paid the bank a fee for the Letter of Credit and the bank issued it as requested. The Letter of Credit was not intended

to be drawn and would only be paid if the work was not performed. (RR2, p. 237). In fact, no money was ever drawn on this Letter of Credit. (RR1, p. 342).

When Sandlin obtained the Letter of Credit, he signed a Personal Financial Statement Form. (Gov. Ex. 4). Sandlin neglected to list the $996,000.00 loan from the Ricketts on this form.[3] (RR2, pp. 230-233). However, Sandlin had placed a 2 million dollar CD with Independent Bank as collateral on this obligation as well as further obligations to the bank and therefore, the bank's loans and letter of credit obligation was fully collateralized. Bank president Brooks testified that the bank was fully secured on this Letter of Credit based on the CD and did not even need a financial statement from Sandlin based on the security. (RR2, pp. 230-37).

Sandlin later submitted a request to the bank for a $700,000.00 line of credit. The same financial statement referenced previously was submitted and again, the $996,000.00 Ricketts loan was not listed. (RR2, pp. 236-37). This request was approved and the bank documents noted that the $700,000.00 Line of Credit, as well as the previously issued $950,000.00 Letter of Credit, were one hundred percent secured by Sandlin's CD. (RR2, p. 241).

Prior to receiving this Letter of Credit and Line of Credit, Sandlin had previously obtained a million

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[3] Sandlin's financial statement listed assets of over $20 million dollars with liabilities of $1.3 million. The government made no allegation that this was not accurate. Sandlin did check the yes box on the form in response to the question of "Do any of your assets secure any debts which have not been reported in previous schedules."

dollar Line of Credit with Independent Bank. He later submitted a loan application for renewal of the million dollar line of credit. (Gov. Ex. 24). (RR2, p. 249). The bank's documents indicate that the bank's committed amount to Sandlin at this point was $2,650,000.00. This amount was the $950,000.00 Letter of Credit, the $700,000.00 Line of Credit and the $1,000,000.00 Line of Credit. This was not the amount the bank had actually given to Sandlin, rather it was a committed amount, which included the guarantee to Mohave County in Arizona, which was never drawn on. The bank continued to hold Sandlin's CD as collateral, which at this time was valued at $2,092,000.00. (RR2, pp. 251-253). Sandlin submitted another financial statement in connection with the renewal of this Line of Credit. (Gov. Ex. 16). This Financial Statement did not list the $996,000.00 Ricketts loan. Once again, Sandlin checked yes to the question, "Do any of your assets secure any debts which have not been reported in the previous schedules." (RR1, p. 253).

Brooks testified that it was the practice of the bank, when they had a fully CD-secured note at the bank, to not require a financial statement from the borrower.[4] Likewise, the FDIC does not require a financial statement in these circumstances. (RR1, pp. 265-270). Brooks explained that when a loan is 100 percent secured by a CD that is held in their bank that is the safest loan a bank can make.

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[4] It is not clear why Sandlin even submitted the financial statement. There is no evidence that anybody at the bank even looked at it and it played no role in the bank's decisions on Sandlin's loan requests.

Brooks testified that in addition to the 2 million dollar CD the bank held as collateral, Independent Bank had a first lien deed of trust on the 17.756 acres of land in Arizona that Sandlin was developing. (RR4, p. 282). The bank had an appraisal of this property for $2,585,000.00. (RR2, p. 283). The total security the bank had from Sandlin exceeded 4 million dollars. (RR2, p. 284). In fact, according to Brooks, all of the indebtedness the bank had to Sandlin was, at all times, 100 percent secured. (RR2, p. 288). For these reasons, the bank considered this a completely safe, securitized loan.

In regards to Sandlin checking yes on the question about whether any of his assets secured any debts which have not been reported in the preceding schedules, Brooks said this should cause the banker to ask for additional information.[5] However, if the customer had an existing banking relationship, the banker may feel that additional information is not necessary. (RR2, p. 290).

Brooks confirmed that at all times Sandlin's payments and obligations to the bank were current. The government financial analyst testified that Independent Bank had $5,547,583 in security, which was collateral in excess of the bank's commitment regarding Sandlin in the amount of $2,097,583. (RR2, pp. 343-345). In fact, the government stipulated to this. (RR1, p. 138). Brooks said Sandlin was a good customer of Independent Bank and always had been. (RR2, pp. 288, 294-298). Sandlin remained, even on

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[5] Apparently the bankers never asked Sandlin any additional questions about this.

the date of the trial, a trusted and valued customer of Independent Bank of Sherman.[6]

QUESTIONS FOR REVIEW

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Is the fact of the false statement, without more, sufficient to prove that the false statement was made with the intent to induce a financial institution to make a loan?

What effect does the government's concession, at sentencing, that the purpose of the false statement to the financial institution under 18 U.S.C. §1014 was not in order to induce the financial institution to make the loan, but was for some other reason, have on the appellate court's review of the sufficiency of the evidence?

REASONS FOR GRANTING THE WRIT

The manner in which the Court of Appeals analyzed the sufficiency of the evidence in this case raises several important questions of federal constitutional and statutory law that should be addressed by the Supreme Court. Sandlin's right to due process of law under U. S. Const., amend. V, is

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[6] Independent Bank never made any complaint concerning Sandlin to any law enforcement agency.

implicated by the fact that this criminal conviction is based on insufficient evidence. The applicable standard of review requires the appellate court to view the evidence in the light most favorable to the jury verdict and affirm if a rational trier of fact could find that the government proved all essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). In *Jackson*, the court described beyond a reasonable doubt as being a "subjective state of near certitude." *See also*, *In re Winship*, 397 U.S. 358 (1970). The question raised in this Petition is whether the Court of Appeals properly analyzed this case in light of the standard of review set out in *Jackson*.

The alleged proof of intent in this case was based on circumstantial evidence. When proving a case through circumstantial evidence, the government "must do more than pile inference upon inference." *United States v. Williams-Hendricks*, 805 F.2d 496, 502 (5th Cir. 1986). In *United States v . Leos-Quijada*, 107 F.3d 786 (10th Cir. 1997), the court stated that, although a jury may draw reasonable inferences from direct and circumstantial evidence, inferences must be more than speculation and conjecture to be reasonable and a conviction must not be obtained by piling inference upon inference; *see*, *United States v. Covelli*, 738 F.2d 847 (7th Cir. 1984), *cert. denied*, 469 U.S. 867 (1984) (rejecting government's argument as simply piling inference upon inference, using little more than unverified supposition); *United States v. McDowell*, 498 F.3d 308 (5th Cir. 2007) (finding government failed to show defendant possessed necessary *mens rea*).

The indictment required the government to prove that Sandlin "knowingly made a false statement and report for the purpose of influencing the action of Independent Bank," in connection with his line and letter of credit applications. The indictment alleged as the false statement that Sandlin

> "knowingly and willfully failed to disclose a debt owed by Sandlin in the amount of $996,000." (T1, pp. 13-14).

18 U.S.C. §1014 requires more than a showing of an inaccuracy on a loan application. *United States v. Lentz*, 524 F.2d 69 (5th Cir. 1975) (defendant must know of falsity of statement and make statement for purposes of influencing action of institution); *United States v. McDow*, 27 F.3d 132 (5th Cir. 1994) (same); *United States v. Krown*, 675 F.2d 46 (2nd Cir. 1982), *cert. denied*, 459 U.S. 839 (1982) (same).

In the jury instructions, the District Court accurately directed the jury that in order to find Sandlin guilty the jury must conclude that the government proved each of the following elements beyond a reasonable doubt:

First: That the defendant made a false statement to Independent Bank;

Second: That the defendant knew the statement was false when the defendant made it;

Third: That the defendant did so for the purpose of influencing Independent Bank to give him a letter of credit or line of credit; and

Fourth: That Independent Bank was federally insured. (T1, pp. 148-49).

As the jury instructions clearly state, it is not enough to simply show that Sandlin submitted an inaccurate financial statement to Independent Bank. The mere fact that he left the $996,000.00 Ricketts loan off the financial statement is not sufficient for a conviction. The government must also prove beyond a reasonable doubt,

> "that the defendant did so for the purpose of influencing Independent Bank to give him a letter of credit or line of credit."

It is on this essential element of the offense, *i.e.*, that the omission of the Rickett's loan was for the purpose of influencing the bank to give Sandlin the credit, that the government failed to adduce sufficient proof. In fact, the only thing proven by the government was the uncontested fact that the Ricketts loan was not listed on Sandlin's financial statement. There is absolutely no evidence establishing that this was done in order to influence the bank to make the loans to Sandlin. The trial evidence actually demonstrated that Sandlin did not omit the Sandlin loan to influence the bank to extend the requested credit.

The evidence established that the bank did not even require a financial statement because the requested loans were fully secured by Sandlin's CD, which was physically held by Independent Bank. Sandlin was a valued and trusted customer of Independent Bank and had a strong and unblemished financial record. There was never any question as to

whether he would be approved for the loans. The evidence was clear that Sandlin knew he would receive the requested credit and that listing the Rickett's loan would not have any effect on this. The government did not present one iota of evidence to support the claim that Sandlin left the Ricketts loan off the financial statement in order to influence the bank. In light of this, a finding that he left the loan off the financial statement "for the purpose of influencing Independent Bank to give him a letter of credit or line of credit," is not a finding that could be made by a rational trier of fact.

By finding that the circumstantial evidence supported the conclusion that the Rickett's loan was omitted for the purpose of influencing the bank's decision to grant the loans, the Court of Appeals has drawn conclusions that are not based on the evidence or any reasonable inferences from the evidence. While circumstantial evidence can support a verdict, the circumstantial evidence must actually support the inference of guilt. Here, the Court of Appeals has found proof of the intent element by "piling inference upon inference" and using speculation and supposition in the place of actual evidence.

Moreover, the government actualy argued at the sentencing hearing that influencing the bank to extend the credit was not Sandlin's intent. In response to the question from the District Court as to why Sandlin left the Ricketts loan off his financial statement, the government prosecutor stated:

> "Mr. Levchuk: Right. But there are two points, one of which is you asked the question "why not list that million-dollar loan? Why would you

> leave a million-dollar loan off two financial statements, not just one?" And it is our contention that a substantial chunk of that money was used to pay Congressman Renzi, and that is the answer to the Court's question. I understand we don't want to get into a side issue on that, but if the court is looking for an answer to that question, that's the government's contention. It was used to pay Congressman Renzi, and that's what's being litigated in Arizona. So, to the extent that the defendant can't answer that question, I'm telling you - arguing why that's the case." (Sent., p. 57).

After arguing to the jury that Sandlin left the Ricketts loan off his financial statement in order to influence the bank to approve him for the loan, the government revealed their true theory to the District Court at sentencing. According to the Justice Department prosecutor, leaving the loan off had nothing at all to do with influencing the bank. Rather, it was left off because of some other activity in Arizona that had no bearing on the analysis of Sandlin's loan application by Independent Bank in Sherman.

This concession by the prosecutor completely undermines the conviction in this case. There was no evidence that Sandlin left the Ricketts loan off of his financial statement in order to influence the bank. The reason there is no evidence supporting this is because that is not why the Ricketts loan was left off. Even the government concedes this and suggests an

alternate reason. For this reason, the evidence on this crucial element of the indictment is insufficient.[7]

As the District Court noted in the jury instructions, there are four distinct elements that the government was required to prove. Proof of element one, that there was a false statement made, does not *ipso facto* prove the third element, i.e. that Sandlin's purpose was to influence the bank to give him a letter or line of credit. The government is required to prove all of the elements and in this case they failed to do so.

In *United States v. Goss*, 650 F.2d 1336, 1341, n. 3 (5th Cir. 1981), the court stated:

> Although "we must review the evidence through *Glasser* glasses most favorably to the Government," *United States v. Casey*, 540 F.2d 811, 814 (5th Cir. 1976), our judicial vision must not be so distorted that the blemishes in the government's evidence go unnoticed. "Glasser does not require complete judicial abdication to the determination of the trier of fact. *United States v. Peterson*, 488 F.2d 645, 649 (5th Cir.), cert. denied, 419 U.S. 828, 95 S.Ct. 49, 42 L.Ed.2d 53 (1974). *Glasser* explicitly requires that a conviction be supported by 'substantial evidence.'" *United States v. Ferg*, 504 F.2d 914, 916 (5th Cir. 1974). See *United States v. Martinez*, 555 F.2d 1269, 1271 (5th Cir. 1977);

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[7] Sandlin submits that this statement by the government prosecutor should be treated, for purpose of this appeal, as a concession that Sandlin did not leave the Ricketts loan off the financial statement in order to influence the bank.

United States v. Bright, 550 F.2d 240, 242 (5th Cir. 1977); *United States v. Barrera*, 547 F.2d 1250, 1255 (5th Cir. 1977).

A conviction based on insufficient evidence is violative of due process under the United States Constitution, Amendment V. Based on the above arguments, both counts of conviction should be reversed and judgment of acquittal entered. *Burks v. United States*, 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978); *Greene v. Massey*, 437 U.S. 19, 98 S.Ct. 2151, 57 L.Ed.2d 15 (1978).

CONCLUSION

Based on the foregoing reasons, Petitioner, JAMES W. SANDLIN, submits that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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